

United States District Court  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SECURITIES AND EXCHANGE	)	Case No.: 10-CV-04535-LHK
COMMISSION,	)	
	)	ORDER GRANTING EXEMPTIONS
Plaintiff,	)	FROM STAY
v.	)	
	)	
BARBRA ALEXANDER, BETH PINA,	)	
MICHAEL E. SWANSON, AND APS	)	
FUNDING, INC.,	)	
	)	
Defendants.	)	

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On December 22, 2010, the Court stayed all discovery in this case, subject to case-by-case exceptions for third-party investor witnesses where good cause is shown to allow discovery to proceed. Order Granting Mot. to Stay Answer and Discovery (“Order Granting Stay”), ECF No. 25. In compliance with the Court’s order, Plaintiff SEC submitted a declaration requesting an exemption from the stay to take the depositions of investor witnesses Sylvia Ho, Alice Morrison, and Loran Hawkins. The SEC seeks an exemption for these witnesses on grounds that Ms. Ho is currently battling brain cancer, and Ms. Morrison and Mr. Hawkins are 79 and 76 years of age, respectively. The SEC shared this list of witnesses with the Defendants and asked them to stipulate to the exemptions. Defendant Michael Swanson so stipulated, and his counsel gave the SEC permission to sign the declaration on his behalf. Defendant APS Funding indicated that it had no

1 objection to the proposed exemptions, but did not formally stipulate to the SEC's declaration.  
2 Defendant Piña did not respond to the SEC's communications at all.

3 Only Defendant Alexander has objected to any of the proposed exemptions. Although she  
4 indicated that she would stipulate to an exemption for Ms. Ho, she told the SEC that she would not  
5 stipulate to an exemption for Ms. Morrison or Mr. Hawkins. In an email attached to the SEC's  
6 declaration, Alexander states that these witnesses "may be of advanced age but they are very active  
7 and I don't believe you're in any danger of losing them during the stay." Decl. re Witnesses Who  
8 Should Be Exempted From Stay Ex. A, ECF No. 29. In response to Alexander's statement, the  
9 SEC states that it is concerned that the memories of people of advanced age are more likely to fade,  
10 and points out that these witnesses' ages approach or surpass the average life expectancy in the  
11 United States.

12 In the Court's order granting the stay of discovery, the Court noted "there may be certain  
13 witnesses, particularly the elderly or those with serious health problems, whose depositions need to  
14 be taken sooner rather than later." Order Granting Stay 11. While the Court certainly hopes that  
15 all of these witnesses will be healthy and active for many years, the Court finds that Defendants'  
16 requested exemptions are reasonable and represent the type of case-by-case exceptions envisioned  
17 in the Court's prior order. Moreover, Defendant Alexander has not provided the Court with  
18 detailed reasons why she opposes the requested exemptions, as required by the Court's order.  
19 Accordingly, the Court GRANTS the SEC's request for leave to take the depositions of Sylvia Ho,  
20 Alice Morrison, and Loran Hawkins.

21 **IT IS SO ORDERED.**

22  
23 Dated: February 4, 2011

24   
25 LUCY H. KOH  
26 United States District Judge  
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